Temporary Layoffs of Hourly Employees – Ask the Expert



How should you approach temporary layoffs when you are operating within multiple jurisdictions?

QUESTION

Our company will be performing temporary layoffs of hourly employees in BC, ON, and QC due to a lack of work. If this circumstance isn't mentioned in any of the affected employees' contracts, can we still go ahead with the plan? If so, what do we need to pay out in terms of severance and benefits for each jurisdiction?

ANSWER

When you're facing a downturn in work-volume and want to "park" employees rather than terminate them outright, each province has its own rules about when a temporary lay-off is lawful, how long it can last, and what happens if you stretch it beyond the statutory maximum.

British Columbia

- You may temporarily lay an employee off up to 13 weeks in any 20-week period without it being deemed a termination.
- If you don't have a written layoff clause in the employment contract, and it's not an industry-customary practice, you must obtain the employee's express consent in writing.
- During a lawful temporary layoff, the employment relationship remains "alive," so you should continue any group-benefit contributions you would otherwise make (and employees continue to accrue statutory entitlements).

Ontario

- ESA allows up to 13 weeks in any 20-week period, or in very limited circumstances (e.g. you continue substantial payments or benefits, the employee remains EI-eligible, or recall rights persist) up to 35 weeks in a 52-week period.
- Ontario courts have held that, even where the ESA permits a layoff, you cannot unilaterally impose one unless the employment contract expressly allows it, or the employee consents, or it's an established industry practice. If no

contractual right or consent, employees can claim constructive dismissal and treat your lay-off as a termination.
- The lay-off is automatically deemed a termination, and you must pay ESA termination pay. In many cases employees will also pursue common-law severance (especially if they have lengthy service and the employer meets the size threshold).

Québec

- Under the Act respecting labour standards, a lay-off can last up to 6 consecutive months without becoming a dismissal
- If you keep someone out longer than six months, the lay-off becomes a termination and you must give them the prescribed written notice or pay indemnities in lieu (i.e. “severance”)
- Because the employment relationship remains in force during a lawful lay-off, you should maintain any group-insurance or pension contributions just as you would if they were working.

EXPLANATION

In British Columbia, If you exceed 13 weeks in a 20-week window (without an approved variance), the Employment Standards Branch treats the lay-off as a termination and you’ll owe statutory termination pay (and, depending on length of service, severance pay).

In Ontario, to qualify for the extended 35-week period you must continue to pay benefits. Otherwise, your layoff still ends at 13 weeks.

In Québec, there is no severance or indemnity owing if you recall the employee within six months.

Bottom Line

- Check your contracts (or get written consent) before you impose any layoffs.
- Stay within the province’s maximum (13/20 in BC; 13/20 or 35/52 in ON; 6 months in QC).
- Maintain benefits during the suspension to preserve the employment relationship.
- If you exceed those limits, the lay-off automatically “converts” to a termination, triggering ESA/CNESST notice and severance obligations.